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STATEMENT OF CHAIRMAN WILMA B. LIEBMAN ON THE NLRB'S DISPUTE WITH THE NLRBU

I have been advised by the General Counsel that the Solicitor General of the United States has authorized a legal challenge to a recent decision of the Federal Labor Relations Authority in a case involving the National Labor Relations Board Union, which represents staff members of the agency.

As Chairman of the Board, I have been pressed by the NLRBU to intervene in this dispute. I have declined to do so because I believe the crux of the dispute involves the statutory authority of the General Counsel, who, under the law, is independent of the Board.

It is important to understand that the dispute centers on the very limited issue of *how* NLRB employees should be grouped for purposes of collective bargaining. There is absolutely no dispute about *whether* NLRB employees have a right to union representation and, for many years, both the Board and the General Counsel have recognized and bargained with the NLRBU and a second staff union, the National Labor Relations Board Professional Association. We continue to do so.

The current dispute arose because the NLRBU sought to change the historical bargaining arrangement by combining employees of the two separate and statutorily independent parts of the Agency (the Board and the General Counsel) into one, consolidated bargaining unit. It is my understanding that the NLRBU was prompted to seek consolidation because of an FLRA ruling, binding on the Board, that prohibited the Board from granting official time across bargaining-unit lines: i.e., from paying Board employees in one unit for engaging in union-representational work on behalf of employees in a different unit.

The General Counsel opposed the unit-consolidation sought by the NLRBU because, in his view, it was inconsistent with our own statute, the National Labor Relations Act, which strictly separates the functions of the General Counsel, who serves as the Agency's prosecutor, and the Board, which functions as the Agency's adjudicator. The law also specifically provides that the General Counsel, not the Board, is the supervisor of certain NLRB employees.

The NLRBU took this matter to the Federal Labor Relations Authority, which ultimately sided with the union's view of the proper bargaining unit. Like NLRB decisions, however, FLRA decisions are subject to review by the federal appellate courts when a party believes the matter has been wrongly decided. Refusing to bargain is the mechanism for obtaining judicial review. This is what the General Counsel has done – but only with respect to the consolidated unit certified by the FLRA, as opposed to the historically separate units. Based on her own independent review of the matter, in turn, the Solicitor General has authorized the filing of a petition for review with the United States Court of Appeals for the District of Columbia Circuit.

Whether or not the General Counsel's legal position is ultimately found to be correct, I believe that he has taken that position in good faith and raised a legitimate legal question. Moreover, I do not believe the statute gives the Board as a body -- much less the Chairman as an individual official -- the authority to order the independent General Counsel *not* to take steps intended to preserve his own statutory authority. For these reasons, I have concluded that, as Chairman, I must await a final, legal resolution of this matter by the federal appellate courts.

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